

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 187 of 1990

cr

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

STATE OF GUJARAT

Versus

NAVINCHANDRA TRAMBAKLAL

Appearance:

Mr. S.R.Divetia, learned Addl.P.P. for the appellant.
Mr. A.P. Munshi for Mr. A.J.Patel, learned counsel for the complainant.
Mr. T.M. Thakkar for respondent Nos.1 to 3.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 26/08/96

ORAL JUDGMENT :

1. This Criminal Appeal under S.378 of the Cr. P.C. has been filed by the State of Gujarat against the order of acquittal passed on 19-12-89 in Criminal Case No.176/83 by the Metropolitan Magistrate, Court No.9,

Ahmedabad.

2. The three respondents were tried for the offences under Sections 420 and 114 of the I.P.C. One Dahyabhai H. Patel filed a report at Navrangpura Police Station at Ahmedabad on 13-10-82 that on 7-10-82 at about 11.45 A.M. near Natraj Cinema on the Ashram Road the three accused-respondents had duped him of a sum of Rs.6,75,000/- in the matter of purchase of gold. The allegation is that, in fact, instead of giving gold, he was given cement/stone slabs wrapped in a paper and was thus cheated. It was the allegation of said Dahyabhai that he was engaged in iron business at Mehsana. He had known the respondent-accused No.3 Devsibhai Karsanbhai through his (Dahyabhai's) maternal uncle's son Hasmukhbhai. Devsibhai is an employee in the Telephone Department. Devsibhai told Dahyabhai that his friend Navinchandra Trambaklal had been dealing as a broker in gold, silver and cloth and he could get the gold at cheaper rate and if Dahyabhai wants, he can manage the purchase of gold at cheaper rate for him. The complainant Dahyabhai and Hasmukhbhai had come to Ahmedabad in connection with their business on 1-10-82 and were taking tea near Dipali Cinema at about 11.0 A.M. and it was at this place that the respondent- Devsibhai came and took tea with them. Dahyabhai, Hasmukhbhai and Devsibhai then went to the house of respondent No.1-accused i.e. Navinchandra Trambaklal and there Devsibhai introduced Dahyabhai and Hasmukhbhai to the respondent No.1 i.e. Navinchandra Trambaklal and his wife Chandrikaben, respondent Nos.1 and 2 respectively. Navinchandra and Devsibhai took a sum of Rs.6000/- from Dahyabhai for purchase of gold and after some time came back with the gold. Dahyabhai asked for the bill and Navinchandra told that the bill will be sent with Devsibhai. Thereafter, on 5-10-82 when Dahyabhai, Hasmukhbhai and Ratilal were sitting in the office of Dahyabhai, Devsibhai came and when he was asked for the bill he told that he would get the same from Navinchandra. Devsibhai also told that if more gold was required, he can get the same at cheaper rate. The complainant Dahyabhai told that he was to come to Ahmedabad on 7-10-82 and there he would decide to purchase gold. Accordingly on 7-10-82 Dahyabhai alongwith Hasmukhbhai came down to Ahmedabad with a bag containing a sum of Rs.6,75,000/- near the Natraj Cinema and were standing on the footpath near Ashok Restaurant. At that time Navinchandra and Devsibhai met them and went to purchase the gold after demanding the money by instructing Dahyabhai and Hasmukhbhai to wait at that very place. At about 11.45 A.M. Navinchandra and

Devsibhai came back with a small attache containing weighty pieces alleged to be gold wrapped in a yellow paper. Having shown this alleged gold wrapped in a yellow paper, complainant and Hasmukhbhai were actually not allowed to open the packet and the attache was closed. The money given by the complainant i.e. Rs.6,75,000/- was taken by Navinchandra and Devsibhai. At that time one person came in Ambassador car, who was known to Devsibhai and in that car Dahyabhai, Hasmukhbhai and Devsibhai proceeded for Mehsana alongwith the Attache containing the alleged gold, which was still in the custody of Devsibhai, who was sitting on the back seat of the car alongwith the attache containing alleged gold while Dahyabhai and Hasmukhbhai occupied the front seat in the car. The vehicles coming from Mehsana side informed them that there was police checking near Kalol. Out of this fear of police checking they felt threatened and Devsibhai threw away the packet containing the alleged gold from the running car. It is alleged that the Police checked the vehicle and Dahyabhai and Hasmukhbhai were asked to get down and Devsibhai and the driver of the car was asked to go back towards Kalol. Thereafter, Dahyabhai and Hasmukhbhai made a retreat towards the spot where the packet had been thrown out from running car by Devsibhai and when they traced out the packet and opened it, they found that it contained cement/stone slabs. Dahyabhai and Hasmukhbhai felt scared, made a search for Devsibhai and ultimately on 13-10-82 filed the report in the Navrangpura Police Station stating that the bundle of notes, which they had given to the accused persons, were bearing the signatures of the complainant and the corresponding entries had also been made in their account books. The police registered the case and during the course of investigation a sum of Rs.2,63,300/- was recovered from Navinchandra and a sum of Rs.1,00,000/- was recovered from Devsibhai's house. Each of the bundles, which were recovered from Navinchandra and Devsibhai, did bear the signatures of Dahyabhai and after preparing the Panchanama the amount was taken into custody and after recording the statements, challan was filed in the Court against three accused persons, namely, Navinchandra, Chandrikaben and Devsibhai for the offences under Sections 420 and 114 of the I.P.C. The trial court gave the benefit of doubt to the three accused persons and acquitted them of the offences under Sections 420 and 114 of I.P.C. and ordered that after the expiry of the period of limitation for filing the Appeal the muddamal money may be given to the complainant-Dahyabhai.

Mr. A.P. Munshi appearing for the complainant, has submitted that in this case as many as nine witnesses have been examined and on the basis of the evidence tendered by these witnesses, the offences punishable under Sections 420 and 114 of I.P.C. was fully made out against the three accused persons and the trial court had erred in giving the benefit of doubt to the accused persons merely because the driver of the car had not been examined as he was not traceable nor the car was traced. It has been submitted that the very fact that the bundles of note, which were found from the possession of Navinchandra and Devsibhai, bear the signatures of the complainant show that the accused persons had first won the trust by giving the complainant real gold but in the second transaction, which was for a bigger amount, they duped the complainant by giving cement/stone slabs in exchange of a sum of Rs,6,75,000/-. The learned counsel Mr.. Thakkar appearing for the respondents-accused has submitted that the prosecution had failed to prove the offences against the accused persons and they have been rightly acquitted by the trial court. So far as the recovery of the money from respondents Nos.1 and 3 is concerned, it has been argued by him that mere recovery of money does not prove any cheating on their part because it is the admitted case of the respondents that they had taken the money from the complainant and in lieu thereof they had given the real gold to him. Mr. Thakkar has submitted that it was for the prosecution to prove that the gold, which was given in exchange, was not the real gold, but the prosecution has failed to prove the same.

4. I have considered the submissions made on behalf of both the sides. No doubt the prosecution has examined as many as nine witnesses, but the fact remains that there is no cogent evidence to prove the offence to the hilt against the respondents-accused persons and except the oral statements of complainant Dahirabhai and his cousin, namely, Hasmukhbhai, there is no evidence against the accused-respondents for the commission of the offence of cheating. The number of the Car (Taxi), which was given out by the complainant, were not found to be correct and no Car or Taxi of such number could be traced by the Police nor the person, who drove this Car or Taxi, in which Dahirabhai, Hasmukhbhai and Devsibhai had boarded for Mehsana, was traced and above all the most important failure on the part of the complainant and the prosecution is that even the main material, which is said to have been given as gold, was not kept or handed over to the police by the complainant. Interestingly enough, the case of the complainant has been that after seeing

the cement/stone slabs wrapped in the packet from the spot, where they were alleged to have been thrown out by Devsibhai from the running car, on their retreat back to the spot, the same was thrown away by them instead of retaining it so as to be handed over to the police for investigation. Such a conduct does not appear to be natural conduct of an aggrieved party and even though all this had happened on 7-10-82, the F.I.R. to this effect was lodged on 13-10-82. Explanation, which has been given that they were scared and were in search of Devsibhai, is far from convincing. The recovery of the bundles of currency notes bearing the signatures of the complainant also does not advance the case for conviction of the respondents for the simple reason that taking of these bundles of currency notes by the respondents is admitted by them in a transaction, which is conducted by both the sides. The offence is not with regard to the taking of the currency notes. The offence, as alleged, was of giving cement/stone slabs wrapped in a yellow paper pretending it to be gold. What was given as an item pretending it to be gold has not seen the light of the day before anybody except the complainant and Hasmukhbhai, who did not care to preserve it and had thrown away the same and this packet or the contents of it, which form the basic item as a foundation for the case of cheating, was not retained to be handed over to the police, rather it was thrown away. In such circumstances, when there is no evidence against respondents Nos.1 to 3 for the commission of the offences under Sections 420 and 114 IPC, except the oral statements of Dahyabhai and Hasmukhbhai, it can not be said that it was a case for recording conviction, more particularly when the manner in which the complainant Dahyabhai and Hasmukhbhai had acted in throwing away the main item i.e. the packet containing the alleged gold, renders the entire prosecution story to be suspicious. Such a conduct of any party, who is cheated, can not be said to be a natural conduct nor there is any satisfactory explanation as to what the complainant was doing for a period of six days after he came to know that he had been duped and cheated in such a manner at the hands of the persons, who had won his confidence only few days back. Thus, I do not find that it is a case worth any interference with the order of acquittal passed by the trial court by giving benefit of doubt to the respondents-accused persons.

5. Accordingly the Appeal against the acquittal is hereby dismissed. R & P may be sent back to the trial court immediately.

